

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

JOSEPH R. SLIGHTS, III  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET  
Suite 10400  
WILMINGTON, DE 19801  
PHONE: (302) 255-0656

June 22, 2010

Jeffrey M. Rainier  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

Marc P. Niedzielski, Deputy Attorney General  
Department of Justice  
Carvel State Office Building  
820 N. French Street  
Wilmington, DE 19801

**Re:   *State of Delaware Ins. Cov. Office, et al v. Jeffrey M. Rainier***  
**C.A. No. N10C-03-296 JRS**  
*Upon Jeffrey M. Rainier's Motion for Appointment of Counsel.*  
**DENIED.**

Dear Mr. Rainier and Counsel:

The Court has reviewed Defendant's Motion for Appointment of Counsel ("the Motion"). For the reasons set forth below, the Motion is **DENIED**.

There is a well-recognized right to appointed counsel for indigent defendants in criminal cases.<sup>1</sup> Courts have been reluctant, however, to extend that right to

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<sup>1</sup> See, e.g., *Gideon v. Wainwright*, 372 U.S. 335 (1963).

indigent litigants in civil cases, and have almost universally declined to do so.<sup>2</sup> This case is no exception.

Delaware State courts have considered Motions for Appointment of Counsel under the narrow framework of the 14th Amendment Due Process Clause. This Court previously has held that “when an indigent civil litigant could not possibly be deprived of his personal liberty as a direct result of the litigation, the Constitution does not require, in the absence of special and compelling circumstances, the appointment of counsel.”<sup>3</sup> Therefore, the appropriate analysis for the Court to undertake in deciding the Motion is the three-prong due process analysis set forth by the United States Supreme Court in *Mathews v. Eldridge*.<sup>4</sup> *Mathews* requires the Court to balance “(1) the private interests at stake, (2) the government’s interest and (3) the risk that the procedure without counsel would lead to erroneous results.”<sup>5</sup>

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<sup>2</sup> See, e.g., *Deputy v. Conlan*, 2008 WL 495791 (Del. Super. Feb. 13, 2008) (finding that indigent plaintiff in civil rights suit against various prison officials did not demonstrate that he was denied “meaningful access” to the Court, such that appointment of counsel would be warranted); *Jenkins v. Dover Police Comm’r*, 2002 WL 663912 (Del. Super. Apr. 5, 2002) (declining to appoint counsel for indigent plaintiff in a civil suit where plaintiff did not present “special and compelling circumstances” to overcome the State’s strong countervailing interest in maintaining order and discipline in its penal institutions).

<sup>3</sup> *Jenkins*, 2002 WL 663912, at \*2 (quoting William L. Dick, Jr., Note, *The Right to Appointed Counsel for Indigent Civil Litigants: The Demands of Due Process*, 30 Wm. & Mary L. Rev. 627, 628 (1989)).

<sup>4</sup> 424 U.S. 319, 321 (1976).

<sup>5</sup> *Jenkins*, 2002 WL 663912, at \*2 (citing *Mathews*, 424 U.S. at 321).

As to the first *Matthews* factor, the private interest at stake here is Defendant's right to meaningful access to the Courts. "Meaningful access has been interpreted to mean 'either access to an adequate law library or legal assistance in the preparation of complaints, appeals, petitions, etc., though the State is vested with discretion to select the method by which to implement this constitutional guarantee.'"<sup>6</sup> In this case, Defendant has not shown that his access to the Court has been restricted. The case law is clear that mere allegations of limits on the amount of time an inmate can spend in the prison library are not sufficient to create a right to appointed counsel in a civil case.<sup>7</sup> Moreover, in this case, Defendant already has filed an answer and has propounded written discovery to the plaintiff. These filings indicate that Defendant is capable of complying with the Court's rules and procedures and that appointment of counsel is not necessary to ensure meaningful access.<sup>8</sup>

The second *Matthews* factor requires the Court to examine the government's interest(s). It is well established that "the State ha[s] a 'strong countervailing interest in maintaining order and discipline in its penal institutions.'"<sup>9</sup> This strong interest,

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<sup>6</sup> *Deputy*, 2008 WL 495791, at \*1 (quoting *Vick*, 1986 WL 8003, at \*2).

<sup>7</sup> *Vick*, 1986 WL 8003, at \*3 ("The allegation that the prison library is only accessible on a very limited basis, without greater specificity, is insufficient to defeat the State's strong countervailing interest in maintaining order and discipline in its penal institutions.").

<sup>8</sup> *See id.* (noting that plaintiff's citation of case law diminishes his claim that he has been denied "meaningful access" such that appointment of counsel would be warranted).

<sup>9</sup> *Jenkins*, 2002 WL 663912, at \*2; *Vick*, 1986 WL 8003, at \*3.

when considered in the context of the extraordinary remedy Defendant seeks, means that Defendant must make a very compelling showing that his private interest in meaningful access outweighs this strong and well-recognized State interest.<sup>10</sup> Defendant has failed to make such a showing because he has not presented the Court with any information that sets his case apart from the volume of cases in which *pro se* inmates litigate civil claims in this Court.

Finally, the Court notes that a Defendant's diminished chance of success in the absence of appointed counsel, without more, does not outweigh the State's strong interest in maintaining order in penal institutions.<sup>11</sup> Moreover, and perhaps most importantly, Defendant has not made any representations to the Court about his attempts, if any, to retain private counsel to represent him in this action.<sup>12</sup> The Court has not been presented with any information that would allow it to conclude that Defendant's indigence alone is responsible for his inability to obtain counsel without the Court's assistance.<sup>13</sup>

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<sup>10</sup> See *Jenkins*, 2002 WL 663912, at \*2-3.

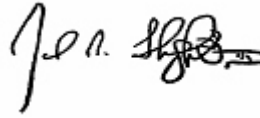
<sup>11</sup> *Vick*, 1986 WL 8003, at \*3.

<sup>12</sup> See *Jenkins*, 2002 WL 663912, at \*3 (noting plaintiff's failure to show his efforts to retain private counsel, and ultimately denying plaintiff's motion for appointment of counsel).

<sup>13</sup> As a practical matter, Defendant's motion for appointment of counsel really seeks an order appointing counsel to represent the defendant either *pro bono* or subject to any contingency or statutory fees that counsel may be able to recover. Neither this Court, nor any other court (to this Court's knowledge) has funding available to pay court-appointed counsel in a civil case.

Defendant's Motion does not set forth the facts necessary to warrant the extraordinary remedy of court-appointed counsel that he seeks. Therefore, Defendant's Motion for Appointment of Counsel must be **DENIED**.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.R. Slights, III". The signature is stylized with a large initial "J" and a prominent "R".

Joseph R. Slights, III

JRS, III/sb